

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.W.P.No.7438 of 1995

Date of Decision : October 11, 2006.

Ajit Singh Petitioner
Vs.
State of Punjab and others Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Gurdial Singh, Advocate
for the petitioner.

Mr.G.C.Gupta, DAG, Punjab.

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P.S.Patwalia, J. (Oral) :

The petitioner worked as Senior Accounts Officer with effect from 22.11.179 in the Department of Finance, State of Punjab. The said post was re-designated as Deputy Controller (Finance and Accounts). Further promotion from the said post is to the post of Chief Accounts Officer, re-designated as Joint Controller (Finance and Accounts). From the post of Chief Accounts Officer/Joint Controller (Finance and Accounts), the next promotion is to the post of Controller, also designated as Additional Director (Finance and Accounts). The promotions are regulated by the State of Punjab State Accounts (Class-I) Service Rules, 1984 (hereinafter referred

to as the 1984 Rules). As per the said rules, five years' experience is required to be eligible for promotion to the post of Chief Accounts Officer from the post of Senior Accounts Officer and similarly five years' experience is required on the post of Chief Accounts Officer for being eligible for promotion as Controller or Additional Director.

The petitioner belongs to the reserved category of Scheduled Castes. He was posted as a Chief Accounts Officer vide order dated 3.6.1988 and he joined the post of Chief Accounts Officer on 21.6.1988. A reading of the order of 3.6.1988 would show that the petitioner's posting was against a vacant post in his existing pay scale as Senior Account Officer. It may be mentioned herein that in the written statement it is admitted that thereafter vide order dated 3.8.1988 the petitioner was promoted as Chief Accounts Officer and given the pay scale of the said post. The petitioner contends that on 22.6.1993 he had completed five years of service as Chief Accounts Officer and therefore was eligible to be promoted to the next higher post of Controller/Additional Director. He further submits that in June 1993, one post was vacant in the said cadre and this was the fifteenth post reserved for Scheduled Caste employees. Since the petitioner belonged to the reserved category of Scheduled Castes, he was entitled to be considered and promoted against the aforesaid post. However the petitioner contends that one Shri B.N.Garg who belonged to the general category was promoted to the said post on 23.6.1993. It is further clear from a reading of the facts that at one stage this promotion order of Shri B.N.Garg was annulled. However thereafter by an order dated 10.9.1993 the order annulling the promotion of Shri B.N.Garg was rescinded and the order dated 23.6.1993 was permitted to continue to

operate. By the same order dated 10.9.1993 the petitioner was also promoted as a Controller. It is not a matter of dispute that by now both the petitioner and Shri B.N.Garg have retired from service. They both retired in the year 1996.

The only surviving grievance of the petitioner is that his promotion as Controller should be antedated to 22.6.1993 when Shri Garg was promoted. The petitioner contends that since he had been discharging duties on the post of Joint Controller from 21.6.1988 onwards, he had the requisite experience of five years as Joint Controller on 20.6.1993. He should therefore have been considered and promoted on 23.6.1993 when respondent no.4 Shri B.N.Garg was promoted. On the other hand the respondents in the written statement have contended that in May 1988 the petitioner's claim for promotion as Joint Controller was considered along with other officers. However the petitioner was not found fit for promotion on account of an Annual Confidential Report for the year 1986-87. The officers who were senior to the petitioner having good service record were promoted vide order dated 6.6.1988. It is thereafter that the petitioner was again re-considered on receipt of his Annual Confidential Report for the subsequent year and on that basis he was promoted only on 3.8.1988 as Joint Controller. Hence he would get experience against the post of Joint Controller only from 3.8.1988 onwards and would not possess the requisite experience of five years in June 1993 when respondent no.4 was promoted. The relevant observations to this effect in the written statement are as hereunder :-

“.....The name of the petitioner was considered for promotion in 5/1988. At that time

the quota of the Scheduled Castes Category was complete i.e. against the cadre strength of II of the Chief Accounts Officers two officers belonging to the Scheduled Castes Category were already there. In the case of the petitioner his A.C.Rs for the years 1984-85 and 1987-88 (for the period ending 31.3.85 and 31.3.88) had not received. His A.C.R. For 1986-87 (10/86 to 31.3.87) contained adverse Remarks as under :-

“I have seen the working of this Officer for nearly 5 months. During this period I find him to be an insufficient and incompetent Officer. He is not able to guide on accounts matters what to talk of other administrative matters. He is very slow in working and indecisive. He cannot take independent decisions on files and keeps on consulting Officers outside the department which sometimes tantamounts to leakage of secrecy of the office. I have tried to make him understand verbally many times to improve his working but he is too self conceited a person to make any reforms. He cannot shoulder responsibility. He does not possess good relations with his subordinates and cannot cope up with seniors either. He

does not know how to take the work from his subordinates. He is very irrational and loose temper on trivial matters which increases his blood pressure and thereby unable to work properly in the office. He is not fit for promotion. However, there is no complaint about his integrity. He should not be put on any public dealing seat.”

These adverse remarks were conveyed to the petitioner on 27.10.87 and his representation against these adverse remarks was also rejected. The officers who were senior to Shri Ajit Singh having good service records were promoted vide orders dated 6.6.88. However the petitioner & his next junior Sh.K.S.Battu were posted in their own pay scales of Sr.Accounts Officers vide orders dated 13.6.88 (Annexure P/I). The petitioner's case was reconsidered on receipt of his A.C.R. for the year 1987-88. Though his ACR for the year 1987-88 was 'Average' even then he was promoted on regular basis as Chief Accounts Officer vide respondent Department orders dated 3.8.1988 (Annexure R/I) along with his next junior Sh.K.S.Battu and they were posted on the posts on which they had been working in their own pay scales vide orders dt.13.6.88. It is due to the

adverse record for the period immediate prior to consideration of the case for promotion (10/86 to 31.3.87) and non-receipt of the Annual Confidential Reports for 1984-85 and 1987-88 (at the time of consideration of promotions in 5/88) that the petitioner could not be promoted on regular basis prior to orders dated 3.8.1988. Accordingly he completed the requisite experience of 5 years for promotion as Controller (F&A)/ Addl.Director (F&A) on 2.8.1993.....”

It is therefore since the petitioner was not eligible for promotion in June 1993 that the vacant post in the cadre of Controller was filled up by promotion of respondent no.4. Otherwise it is not denied in the written statement that the post against which respondent no.4 was promoted was a post meant for reserved category candidate.

The only question therefore that arises for determination in this writ petition is as to whether once the petitioner had started discharging duties as Joint Controller from 21.6.1988 onwards he could have been said to have fulfilled the requirement and experience under the 1984 Rules. Rule 6(1) to this extent is relevant and is reproduced as hereunder :-

“6. Method of appointment and qualifications :-

(1) Appointments in the service shall be made in the following manner :-

1(a) In the case of Principal, Accounts Training Institute, Controller, Internal Audit Organisation (Revenue) and Financial

Advisor, Sutlej Yamuna Link Canal Project by promotion from amongst the Chief Accounts Officers who have an experience of working as such for a minimum period of five years, and ;”

A reading of the rule would show that the rule requires that a Chief Accounts Officer should have an experience of working as such for a minimum period of five years. It is the admitted position before me that the petitioner had started working against the post of Chief Accounts Officer from 21.6.1988 onwards. Thus he did have an experience of working against the post of Chief Accounts Officer for five years on 22.6.1993 and thereafter when respondent was promoted. On that date the petitioner was also a regular Chief Accounts Officer. Thus in my opinion the claim of the petitioner was wrongly ignored for promotion on the date when respondent no.4 was promoted. This is all the more so since the petitioner belonged to a reserved category of Scheduled Castes and the post was also reserved for Scheduled Caste candidate.

Under these circumstances the present writ petition is allowed and the respondents are directed to consider the case of the petitioner for promotion as Controller/Additional Director with effect from 23.6.1993 i.e. the date respondent no.4 was promoted. In case the petitioner is found suitable for promotion he shall be granted all consequential benefits which may accrue to him.

October 11, 2006
monika

(P.S.Patwalia)
Judge

